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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL - 6 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of
MARTHA J. HUBER, et al.

For Construction Permit for a
New FM Station on Channel 234A
in New Albany, Indiana

)
) MM Docket No. 93-51
)
) File Nos. BPH-911114ME,
) et al.
)

TO: Honorable Richard L. Sippel
Administrative Law Judge

**SECOND PETITION TO ENLARGE ISSUES
AGAINST RITA REYNA BRENT**

Martha J. Huber (Huber), by her attorneys, now petitions
the Presiding Judge to specify the following issues against
Rita Reyna Brent (Brent):

To determine whether the transmitter site
specified by Rita Reyna Brent has been
continuously available to her since the
filing of her application;

To determine whether Rita Reyna Brent
violated Section 1.65 of the Commission's
rules by failing to report (a) the sale
of her transmitter site and her loss of
reasonable assurance of that site, and/or
(b) the loss of the balance sheet she
allegedly relied upon to certify to her
financial qualifications;

To determine, in light of the evidence
adduced pursuant to the foregoing issues,
whether Rita Reyna Brent possesses the
qualifications necessary to become a
Commission licensee.

I. Procedural Matters

This petition is timely pursuant to Section 1.229(b)(3)
of the Commission's rules. It is based in part upon the

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deposition of Brent under the standard comparative issue. Counsel for Huber received the transcript of that deposition on June 18, 1993. The petition is also based upon documents produced by Brent on June 30, 1993 pursuant to the financial qualifications issues specified by Memorandum Opinion and Order, FCC 93M-374 (released June 17, 1993). When holidays are considered,¹ this pleading is being filed within fifteen days after Huber received those materials. The petition is therefore timely.

The petition complies with Section 1.229(d) of the Commission rules because its allegations of fact are supported by Brent's deposition testimony and declarations under oath and by materials which may be officially noticed, including Brent's application, a recorded real estate deed, and a letter and pleadings from Brent's counsel.

Pursuant to Section 1.229(e) of the Commission's rules, Huber is identifying the documents she wishes to be produced and the depositions she wishes to take in the attached appendix to this petition.

If the Presiding Judge adds the Section 1.65 issue requested in this petition, he would be required to issue a Notice of Apparent Liability to Brent for a forfeiture. Section 1.229(f) of the Commission rules. That rule indicates that the notice shall indicate that "the applicant may be liable for a forfeiture of up to the maximum statutory

¹ The fifteenth day after June 18 is Saturday, July 3. This pleading is being filed on the next business day, Tuesday, July 6.

amount." In this case, where there was at least two discrete violations of Section 1.65, the maximum statutory amount is \$50,000, or \$25,000 for each violation. See 47 U.S.C. §503(b)(2)(A).

II. Background

A. Transmitter Site

When Brent filed her application on November 15, 1991, she certified that she had reasonable assurance that her transmitter site would be available. See Brent's response to Section VII, Question 2 of the application, submitted as Attachment 1 to this petition. Brent certified that she had obtained reasonable assurance from "Sam Lockart" (his actual name is Samuel C. Lockhart) the owner of the property.

At her deposition, Brent originally testified that she obtained the transmitter site proposed in her application. Brent Dep. Tr. 23.² When pressed for details, she admitted that it was George Owen, not Brent, who talked to Mr. Lockhart. Brent Dep. Tr. 23-24. George Owen is a broadcaster who owns radio stations, as well as being a cousin of Brent's husband. Brent Dep. Tr. 12-13. Ms. Brent did not contact Mr. Lockhart "because I didn't have time to go". Brent Dep. Tr. 23-24.

On April 20, 1992, Mr. Lockhart sold the property that Brent was proposing as her transmitter site to Patricia Harrison. Copies of the deed and land record are submitted as

² Pertinent portions of the transcript of Brent's deposition are submitted as Attachment 2 to this petition.

to check on the status of her site with Mr. Lockhart. Indeed, for a full year after Mr. Lockhart sold the land, Brent made no attempt to obtain reasonable assurance of the land from Ms. Harrison.

Brent's deposition testimony establishes that she learned of the sale of her transmitter site only through happenstance instead of through any action on her part. On April 21, 1993, Brent and her husband had dinner with their friends Dennis and Dorothy Ott, who mentioned "[j]ust in passing" that Mr. Lockhart "had sold the land on which your transmitter site was". Brent Dep. Tr. 25. Brent did not even bother to ask when the sale occurred. Brent Dep. Tr. 25-26. Brent did not purport to obtain reasonable assurance of the site from Ms. Harrison until April 24, 1993, when she obtained a letter from Ms. Harrison.³ A period of over one year passed between the time Ms. Harrison bought the land and the time Brent even attempted to contact Ms. Harrison.

Brent has never amended her application to report that there was a period of over one year in which she lacked reasonable assurance of site availability. She has also never amended her application to report that Ms. Harrison is the owner of the transmitter site.

B. The Brent Balance Sheet

According to her application, Brent is relying upon funds from herself and her husband to finance the construction and

³ A copy of the letter from Ms. Harrison is submitted as Attachment 4 to this petition.

operation of her station. Brent has repeatedly claimed that, at the time she certified, she "had on hand a balance sheet current to within 90 days of the date of my signature". Declaration of Rita Reyna Brent, dated May 26, 1993 (Attachment 5 to this petition). That declaration was submitted as part of Brent's attempt to prevent the specification of financial qualifications issues against her application. Brent repeated her claim in a declaration dated June 21, 1993 which was attached to her June 21 "Request for Permission to File Appeal" (Attachment 6 to this petition). In footnote 4 of the "Request for Permission to File Appeal", Brent sought a stay of the requirement that she produce her balance sheet. Indeed, Brent has fought in every possible way the disclosure of her balance sheets.

In her various pleadings, Brent had never disclosed that the balance sheet she allegedly had when she certified was lost or misplaced.

When Brent finally had to produce documents on June 28, 1993, the balance sheet Brent allegedly had when she certified was not produced. Instead, counsel for Brent reported in a cover letter (Attachment 7 to this petition) that Brent's accountant:

had custody of the pre-filing balance sheet but lost or misplaced it.

Brent produced a "reconstructed" balance sheet that was prepared in the spring of 1993 by her accountant. It is unclear at this time how the balance sheet was reconstructed.

III. Analysis

The facts noted above demonstrate that Brent has been

Reporting of Changed Circumstances, 3 RR 2d 1622, 1625 (1964). Brent has violated Section 1.65 in several material respects. She never reported the sale of her transmitter site. She never reported that she lacked reasonable assurance of her transmitter site for a period of one year. When she strenuously fought to prevent disclosure of financing documents and the specification of financial qualifications issues against her application, she violated Section 1.65 by failing to disclose that the balance sheet she allegedly had in hand when she certified her application was "lost or misplaced".

A Section 1.65 issue will be specified when:

(1) unreported interests are of decisional significance, (2) an intent to conceal is present, or (3) a pattern of carelessness or inattentiveness is present.

Merrimack Valley Broadcasting, Inc., 99 FCC 2d 680, 683-684 n.9, 57 RR 2d 713, 716 n.9 (1984). A reporting issue must be specified under the Merrimack test. Brent's behavior concerning her site, at an absolute minimum, shows "a pattern of carelessness or inattentiveness". This applicant was "too busy" to devote any time herself to obtaining reasonable assurance of a transmitter site. Instead, she let George Owen, an existing licensee who allegedly has no interest in her application, undertake the fundamental duty of obtaining reasonable assurance of a transmitter site. Brent apparently made no attempt to communicate with the property owner herself. Brent then totally ignored her duty to "make

ordinary efforts" to remain reasonable assurance of site availability. Berea Broadcasting Co., Inc., supra. She clearly had a duty to ascertain whether her site was sold or if she still had reasonable assurance of site availability. Instead, she did nothing for a year after the site was sold. Even then, her discovery of the sale only occurred because somebody else told her, not because of action on Brent's part. Brent's deposition testimony establishes far more than a pattern of carelessness or inattentiveness. It demonstrates a recklessness and cavalier disregard for the Commission's elementary requirements which is essentially equivalent to an intent to deceive the Commission. These violations, standing alone, require the specification of a reporting issue.

The Presiding Judge must also consider Brent's failure to report that the balance sheet she allegedly had when she certified was "lost or misplaced". In the Orange Beach, Alabama FM proceeding (MM Docket No. 89-292), the Presiding Judge specified, inter alia, a Section 1.65 issue against an applicant (Bodiford) that had not reported until a petition to enlarge issues was filed that he had lost alleged bank letters. Memorandum Opinion and Order, FCC 90M-392 (released February 28, 1990) (Attachment 8 to this petition). Brent's balance sheet was just as important as Bodiford's bank letter, and her conduct was considerably more deceitful. While the Bodiford applicant had admitted in his opposition that he had lost the bank letter, Brent hid that fact from the Presiding Judge and the other parties when she opposed Huber's petition

to enlarge issues and when she filed her "Request for Permission to File Appeal". Only when her extensive efforts to prevent disclosure of financial documents failed did she claim that the original balance sheet was "lost or misplaced". Brent had an obligation to inform the Presiding Judge and the other parties up front of the lost or misplaced balance sheet because that fact should have been before the Presiding Judge when evaluating Huber's petition. Her failure to disclose that important fact reflects an intent to deceive the Commission. It also casts severe doubt upon the existence of that balance sheet or whether that balance sheet demonstrated she was financially qualified. That significant omission.

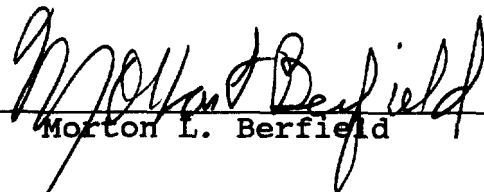
shortly after it happened, but she did nothing. Absent extraordinary circumstances, the reasonable assurance letter that Brent obtained from Ms. Harrison cannot be considered because it was not diligently obtained.

Accordingly, Huber asks the Presiding Judge to specify the issues noted above.

Respectfully submitted,

MARTHA J. HUBER

By


Morton L. Berfield

By


John J. Schauble

Cohen and Berfield, P.C.
1129 20th Street, NW, # 507
Washington, DC 20036
(202) 466-8565

Her Attorneys

Date: July 6, 1993

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only

FEE NO:

FEE TYPE:

FEE AMT:

ID SEQ:

For APPLICANT Fee Use Only

Is a fee submitted with this application?

☒ Yes ☐ No

If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box):

☐ Noncommercial educational licensee☐ Governmental entity

FOR COMMISSION USE ONLY

BPH-91115MC
FILE NO.

Section I - GENERAL INFORMATION

1. Name of Applicant

Rita Reyna Brent

Send notices and communications to the following person at the address below:

Name

John Wells King

Street Address or P.O. Box

2106 St. Andrews Road

Street Address or P.O. Box

Suite 600 - 2000 M Street N.W.

City

Jeffersonville

State

Ind.

ZIP Code

47130

City

Washington, D.C.

State

ZIP Code

20036

Telephone No. (Include Area Code)

(812) 283-7886

Telephone No. (Include Area Code)

(202) 331-0606

2. This application is for:

☐

AM

☒

FM

☐

TV

(a) Channel No. or Frequency
234A 94.7(b) Principal
Community

City

New Albany

State

Ind.

(c) Check one of the following boxes:

☒

Application for NEW station

☐

MAJOR change in licensed facilities; call sign: _____

☐

MINOR change in licensed facilities; call sign: _____

☐

MAJOR modification of construction permit; call sign: _____

File No. of construction permit: _____

☐

MINOR modification of construction permit; call sign: _____

File No. of construction permit: _____

☐

AMENDMENT to pending application; Application file number: _____

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3. Is this application mutually exclusive with a renewal application?

☐

Yes

☒

No

If Yes, state:

Call letters

Community of License

City

State

SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
FCC 93M-247 31482

In re Applications of)	MM DOCKET NO. 93-51
MARTHA J. HUBER)	FILE NO. BPH-911114ME
RITA REYNA BRENT)	FILE NO. BPH-911115MC
MIDAMERICA ELECTRONICS SERVICE,)	
INC.)	FILE BPH911115ML
STATION COMMUNICATIONS, INC.)	FILE NO. BPH-911115MU
For Construction Permit for a)	
New FM Station on Channel 234A)	
in New Albany, Indiana)	

DEPONENT:	Rita Reyna Brent
DATE:	May 26, 1993
REPORTER:	Kitty Karem

COULTER, KAREM & McBRIDE
COURT REPORTERS
765 Starks Building
Louisville, Kentucky 40202
(502) 582-1627

1 or what way you learned of the allocation?

2 A A friend told me about it.

3 Q And do you remember the friend's name?

4 A George Owen.

5 Q And who is Mr. Owen?

6 A George Owen is just an old friend.

7 Q Is he in the broadcast business?

8 A Yes, he is.

9 Q Do you know where, in what capacity he's
10 in? Is he affiliated with a station in this area?

1 opportunity to file with the channel?

2 A Yes.

3 Q What did you do next after having
4 obtained this information from Mr. Owen?

5 A I discussed it with my husband.

6 Q And what is his name?

7 A Robert Brent.

8 Q Just briefly what does Mr. Brent do?

9 A My husband is co-owner of PBB,
10 Incorporated.

11 Q And where is that located?

12 A 151 North Shelby, Louisville.

13 Q Just briefly what kind of business is
14 that?

15 A It's a company where they do radiation
16 shielding and they build cancer treatment centers.

17 Q But your husband -- is your husband
18 involved in broadcasting in any way?

19 A No.

20 Q And then after having discussed the FM
21 opportunity with your husband, what were the next steps
22 you did with regard to your application?

23 A I got in touch with Mr. Henson, Mr.
24 Clarence Henson, an engineer.

25 Q And how did you get Mr. Henson's name?

1 Q My question is limited to prior to the
2 filing.

3 A No.

4 Q Did you obtain the transmitter site that
5 you're proposing in your application?

6 A Yes.

7 Q Did anyone assist you in obtaining a
8 transmitter site?

9 A Originally I didn't have time to go when
10 it was Sam Lockard. I was having difficulties at the
11 hospital. We were putting in a new dictation system and
12 Bob was out of town.

13 Q Bob?

14 A Bob, my husband, was out of town so I
15 couldn't send him. I knew that George wasn't doing very
16 much, so I sent George to talk to Sam the first time.

17 Q George?

18 A Owen.

19 Q George Owen. And that piece of property
20 owned by Mr. Lockard is what you ended up specifying for
21 your site; is that correct?

22 A Yes.

23 Q Now, how did it come about that you
24 asked Mr. Owen to contact Mr. Lockard?

25 A It came about because I didn't have time

1 to go. I didn't have time. At that time I was working
2 about 12 hours a day. We were putting in the new
3 dictation system at the hospital, which was a major deal,

1 26th of this year regarding Mrs. Brent's transmitter site,
2 and that indicates that there was a sale of that land; is
3 that correct?

4 A That's correct.

5 Q From Mr. Lockard to --

6 A Pat Harrison.

7 Q To Pat Harrison. And did you contact
8 Pat Harrison?

9 A I certainly did.

10 Q And do you recall when that was?

11 A I think I found out on the 21st, April
12 the 21st maybe. The day I found out I started calling
13 her.

14 Q How did you find out?

15 A We had lunch with Dennis and Dorothy Ott
16 and they just happened to mention it to me.

17 Q We, who is we?

18 A We, my husband and I had dinner with
19 Dennis and Dorothy Ott.

1 A I did not even ask.

2 Q Do you know how it came about that
3 Ott -- the Otts knew about the sale of your transmitter
4 site?

5 A The reason Dennis and Dorothy were even
6 involved, they're long-time friends, first of all, but
7 originally I went to Dennis and Dorothy because I knew
8 that they were building in Georgetown. I thought their
9 land might be good for it for the tower site. They're
10 builders, or Dorothy is a builder, and they're the ones
11 that gave me Sam Lockard's name in the beginning.

12 Q I see. Now, is either Mr. Ed Henson or
13 Mr. Clarence Henson, are they going to have any role with
14 regard to your station if you're awarded the license?

15 A Only if I need more engineering, if I
16 need to change a tower site or something.

17 Q I wonder if a copy of your application
18 could be put in front of Ms. Brent.

19 MR. SOLOMON: Sure.

20 MR. BERFIELD: Thank you.

21 Q Now, I'll ask you, Mrs. Brent, if you
22 would to turn to Exhibit 1 of your application. It's
23 entitled, "Plan programming service."

24 Do you have that?

25 A Yes.

WARRANTY DEED

MAIL TAX STATEMENTS TO:

504 Mt. Tabor Road
NEW Albany, IN 47150CARD #002-05600-40, CARD #002-05600-39 &
CARD #002-05600-42THIS INDENTURE WITNESSETH: That SAMUEL C. LOCKHART and CAROL
J. LOCKHART, husband and wife,CONVEY AND WARRANT

unto PATRICIA B. HARRISON, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the following described real estate situated in the County of Floyd, State of Indiana, and described as follows, to-wit:

TRACT 1

A PART OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP
2 SOUTH, RANGE 5 EAST, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST
QUARTER; RUNNING THENCE NORTH ON THE EAST LINE OF SAID
QUARTER 1232.5 FEET; THENCE WEST PARALLEL WITH THE SOUTH
LINE OF SAID SECTION 272.237 FEET; THENCE SOUTH PARALLEL
WITH THE EAST LINE OF SAID SECTION 160 FEET AND THENCE
WEST PARALLEL WITH THE SOUTH LINE OF SAID SECTION

WEST 300.7 FEET, ALONG SAID STATE RIGHT OF WAY; THENCE SOUTH 42 DEG. 07' WEST 28.3 FEET TO THE PLACE OF BEGINNING, CONTAINING 2.0 ACRES, MORE OR LESS.

TRACT II

A PART OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 SOUTH, RANGE 5 EAST, AND BOUNDED AS FOLLOWS: BEGINNING ON THE EAST SECTION LINE 1072.5 FEET NORTH OF THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE WEST PARALLEL WITH SOUTH SECTION LINE 272.237 FEET; THENCE NORTH PARALLEL TO EAST SECTION LINE 160 FEET; THENCE EAST PARALLEL WITH SOUTH SECTION LINE 272.237 FEET TO EAST LINE OF SAID SECTION; THENCE SOUTH ON EAST LINE OF SAID SECTION 160 FEET TO PLACE OF BEGINNING, CONTAINING ONE (1) ACRE, MORE OR LESS.

Subject to any and all easements and/or restrictions of public record which may apply to the above described real estate.

TO HAVE AND TO HOLD, the same unto said Grantee, her heirs and assigns, in fee simple forever.

The above described real estate is conveyed free and clear of all liens and encumbrances, except the real estate taxes, which having been prorated between the parties to the execution of this Warranty Deed, the Grantee hereby assumes and agrees to pay the 1992 taxes, due and payable in 1993.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals, this 16th day of April, 1992.

RECEIVED
FOR RECORD
TIME 3:37 PM
DATE APR. 29, 1992
RECORDED IN 9 DPA
INSTR. NO. 4866
Samuel C. Lockhart (SEAL)
Carol J. Lockhart (SEAL)
Glen L. Hatfield
SAMUEL C. LOCKHART
CAROL J. LOCKHART

STATE OF INDIANA RECORDER OF FLOYD COUNTY
COUNTY OF FLOYD) SS:

Before me, a Notary Public, in and for said County and State, personally appeared SAMUEL C. LOCKHART and CAROL J. LOCKHART, husband and wife, and acknowledge the execution of the foregoing deed as their free and voluntary act and deed for the uses and purposes expressed therein.

WITNESS my hand and seal, this 16th day of April, 1992.

Diann M. Brumley
NOTARY PUBLIC
DIANN M. BRUMLEY
PRINTED SIGNATURE

My Commission Expires:

11-26-93

Resident of FLOYD Co., Indiana

THIS INSTRUMENT PREPARED BY:
YOUNG, LIND, ENDRES & KRAFT
JOHN A. KRAFT
ATTORNEY

Duly Entered For Taxation
Subject To Final Acceptance
For Transfer

~~4987~~

PERMIT 1986: 8.000 768 80 FT
GAR: 160 ADD.

lololololol

040

AREA

764
324
340
388

13800
2500
4100

20400

Nov. 8, 1991

~~Mr. Sam Leckhart~~ Pat Harrison
~~Georgetown, Ind.~~ 504 Mt. Labor Road
New Albany, Indiana 47150

Dear sir:

I am an applicant for FM radio frequency 94.7 to serve New Albany, Indiana. In searching for a tower site my consulting engineers determined that your property qualifies for this license allocation. Located south of and adjacent to Interstate 64 approximately $\frac{1}{4}$ mile east of the Georgetown Indiana exit, the exact co-ordinates on which I propose to build the tower are

85 deg. 54 min. 19 sec. longitude and 38 deg. 17 min. 30 sec. latitude.
(85 degrees longitude, 54 min. 19 sec. and 38 degrees, 17 min. 30 seconds latitude)

The actual tower and supporting guy wire system will require approximately 5 acres. Subject to F.C.C. granting me this broadcast license, I will be willing to lease the aforementioned co-ordinates and the surrounding 3 acres for \$500.00 per year for a period of 5 years. Renewal terms to be negotiated with the actual lease.

I understand that the future business and regulatory conditions may alter or negate your ability to proceed with this project; however, at this time I need your authorization in order to file my timely application.

Kind regards,

Ms. Rita Brent
2106 St. Andrews Rd.
Jeffersonville, Indiana 47130

I accept your proposal subject to the following conditions:

I hereby agree to continue your agreement on the above mentioned land previously owned by Sam Leckhart now owned by me Pat

DECLARATION OF RITA REYNA BRENT

I, Rita Reyna Brent, do hereby declare as follows:

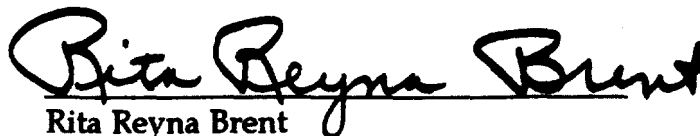
I have read the Petition to Enlarge Issues dated May 17, 1993, that was filed against my application by Martha J. Huber.

Ms. Huber claims that my attorney said I did not have on hand at the time I filed my application the documents required to be on hand by the instructions to FCC Form 301. Regardless^{of} what Ms. Huber thinks my attorney said, a claim that I did not have the necessary documents is not true.

At the time I prepared and signed my application, I had on hand a balance sheet current to within 90 days of the date of my signature. I also had on hand documents that showed yearly net income after Federal income tax for each of the past two years.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct of my personal knowledge.

Executed this 26th day of May 1993.


Rita Reyna Brent